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No. 320

In the Supreme Court of the United States

OCTOBER TERM, 1944

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, AND THE STATE OF FLORIDA, ET AL., PETITIONERS

v.

SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT AND RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RECONSTRUCTION FINANCE CORPORATION IN OPPOSITION

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OPINIONS BELOW

The orders of the district court appear at R. 91, 112–127. The opinion of the circuit court of appeals (R. 149) is reported in 142 F. (2d) 637.

JURISDICTION

The judgment of the circuit court of appeals was entered on May 8, 1944 (R. 149). The petition for a writ of certiorari was filed on August

14, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the principle of sovereign immunity from suit bars an award to a drainage district for its tax claims on lands owned by the State of Florida in a proceeding brought by the United States to condemn those lands.

2. Whether the tax liens of a drainage district on lands fee simple title to which passed to the State under Florida's so-called Murphy Act of 1937 were extinguished under Florida law.

3. Whether, under Florida law, the tax liens of a drainage district are subordinate to liens for state and county taxes, assessed after 1927, on the same land.

STATUTES INVOLVED

The relevant statutory provisions are set forth in the Appendix, *infra,* pp. 13–14.

STATEMENT

On October 9, 1939, the United States filed a declaration of taking and a petition for condemnation of 5,766.82 acres of land to be used as the site for an Army air base in the County of Hillsborough in the State of Florida (R. 8–15). On November 10, 1939, the district court "ordered and adjudged" that the title to the land was vested in the United States after the latter had deposited in the registry of the court a sum estimated to be

just compensation for the land taken (R. 16–18). In response to the petition of the United States, the Southwest Tampa Storm Sewer Drainage District, hereinafter called the Drainage District (R. 25), the Reconstruction Finance Corporation (R. 19), the State of Florida (R. 23), the County of Hillsborough (R. 23), and the Board of Trustees of the Internal Improvement Fund of the State of Florida (R. 42), filed answers, each claiming a portion of the award to be made at the conclusion of the condemnation proceedings. On January 31, 1942, the jury determined the fair market value of each parcel or tract of land involved in this proceeding, the total award being $157,701.25 (R. 102).

The facts which underlie the consequent dispute as to the disposition of this fund are as follows: A large part of the lands taken by the United States were within the boundaries of the Drainage District, which was established in 1923 (R. 26–27). On October 16, 1924 (R. 31), and again on June 1, 1926 (R. 38), the Board of Supervisors of the Drainage District resolved that a tax be levied on all lands in the district to which benefits had been assessed (R. 31, 38), and shortly thereafter made provision for the "annual levy and collection in installments of the total taxes levied" (R. 32–33, 40). In addition, the Drainage District, in each year from 1925 to 1939, 1928, 1935, and 1936 excluded, levied a maintenance tax on each tract of

land within the district (R. 34). The Drainage District claimed that the annual installments and maintenance taxes remained unpaid in part, and that penalties had attached to the delinquent taxes (R. 34, 40). In order to retire some of the matured bonds issued by the Drainage District (R. 58), the court was asked to award to the District the unpaid installment and maintenance taxes and penalties, as listed, out of the proceeds contributed by the United States for the taking of the land (R. 61). The answer of the Reconstruction Finance Corporation alleged that it was the owner and holder of almost all of the bonds issued by the Drainage District (R. 20), that the taxes here involved were the District's only means of paying its bonded indebtedness (R. 22), and prayed that "from the amount found as a reasonable value on each piece, parcel, lot or tract of land involved in this suit * * * the unpaid total tax secured by lien thereon be deducted from the value fixed on said land and paid over to this respondent to be applied by it in reduction of the indebtedness due it by the Southwest Tampa Storm Sewer Drainage District" (R. 22–23).

Petitioners, the State of Florida and the Board of Trustees of the Internal Improvement Fund, as agent of the State, claimed that a portion of the lands condemned belonged to the State of Florida, that these lands, on which there had been outstanding tax certificates, based on assessments

made as early as 1894 (R. 43–54), had been acquired by the State under the Murphy Act (Chap. 18296, Laws of Florida, 1937, Sec. 9) (see Appendix, *infra*, pp. 13–14), and that the State was entitled to the entire sums awarded for the taking of these lands (R. 42–43, 68).[1]

As to lands title to which was not in the State, the tax-collecting officials of Florida and Hillsborough County, also petitioners here, asserted that liens for state and county taxes (R. 63) were superior to liens for installment taxes and liens for maintenance taxes levied by the Drainage District before June 6, 1927, the effective date of Chapter 12040, Laws of Florida, 1927 (R. 69—see Appendix, *infra*, p. 14). Only maintenance taxes levied after the effective date of Chapter 12040, these petitioners urged, gave rise to a "lien of equal dignity with the liens for State and County taxes" (R. 65).

The district court ruled that the vesting of title in the Trustees of the Internal Improvement Fund under the Murphy Act of 1937 extinguished liens for state and county taxes, that these lands were subject to all unpaid drainage taxes, and that "the proceeds contributed by the United States for the taking of said lands should, as to each parcel, be

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[1] The State and its Trustees did concede that maintenance taxes levied after 1927 gave rise to liens which were of equal dignity with state and county tax liens and that the Drainage District might participate to this extent in the award (R. 69–70).

applied to the payment of the unpaid drainage taxes against such parcel" (R. 91). As to liens of the Drainage District on lands not owned by the State of Florida, and liens for state and county taxes, none of which were for 1927 or any earlier year (R. 92, 105–111, 113), the court held that they were "of equal dignity and neither is entitled to priority of payment over the other" and "that the proceeds be applied to the payment of the unpaid State and County taxes and unpaid drainage taxes pro rata and without preference, one over the other" (R. 92). In conformity with this view, the district court ordered that the award for lands, title to which was not held by the State, should be apportioned so that $878.99 should be payable for state and county taxes, and $2,571.01 should be payable for drainage taxes (R. 115). As to the lands owned by the State, it was provided that $17,297.97 be payable to the Drainage District, and that the remainder, $11,700.53, be payable to the Trustees of the Internal Improvement Fund (R. 127).

All of the petitioners appealed to the Circuit Court of Appeals for the Fifth Circuit, and that court affirmed, in its entirety, the order of the district court (R. 149).

ARGUMENT

1. Given the power of the United States to condemn state-owned land (*Oklahoma ex rel. Phillips* v. *Atkinson Co.*, 313 U. S. 508, 534–535), accept-

ance of petitioners' contention, that the district court was barred by the principle of sovereign immunity from satisfying the lien of the Drainage District out of the funds paid by the United States for the condemned land, would mean that in any such proceeding against state-owned land the United States could not secure title, free and clear, where persons other than the State had any claim on the land. The federal statute under which this proceeding was instituted (Sec. 1, 46 Stat. 1421, 40 U. S. C. 258a, Appendix, *infra*, p. 13) provides that "the court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable." To sustain the contention of petitioners it would be necessary to hold that the district court, having properly taken and exercised jurisdiction in this eminent domain proceeding brought by the United States, is without authority to determine who is entitled to the money awarded and to distribute the money to those found entitled to receive it.

The prior decisions of this Court make it clear that no such result is required. In *Clark* v. *Barnard,* 108 U. S. 436, a railroad company deposited a loan certificate for $100,000 with the Treasurer of the State of Rhode Island, as security for the payment of a bond. Upon the bankruptcy of the railroad, the assignees in bankruptcy filed a bill in equity to restrain the State Treasurer from col-

lecting the certificate. In the ensuing proceedings, the money was paid into the bankruptcy court and the State appeared to claim it. This Court held that the voluntary appearance of the State to claim the fund in controversy made it "necessary to adjudicate the adverse rights of the State and the appellees to the fund, to which both claimed title" (p. 448), and that the Eleventh Amendment did not bar such adjudication. Similarly, Florida having entered into this proceeding to claim the award for its lands, cannot now raise the defense of sovereign immunity so as to deprive the district court of the right to decide whether the Drainage District is properly entitled to a portion of the award. "If the State chooses to come into the court as plaintiff, or to intervene, seeking the enforcement of liens or claims, the State may be permitted to do so, and in that event its rights will receive the same consideration as those of other parties in interest." *Missouri* v. *Fiske,* 290 U. S. 18, 28. And in *United States* v. *Bank of New York Co.,* 296 U. S. 463, this Court held that where the United States claimed certain funds which had been deposited with the Superintendent of Insurance of the State of New York, and which were being administered by him under the direction of a state court, the United States should present its claim in the state proceedings. Mr. Chief Justice Hughes, speaking for the Court, said that "In intervening for the presentation of

its claim, the United States would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant. We cannot see that there would be impairment of any rights the United States may possess, or any sacrifice of its proper dignity as a sovereign, if it prosecuted its claim in the appropriate forum where the funds are held" (pp. 480–481). In so ruling this Court contemplated that the state court would be empowered to decide the rights of the United States and the adverse claimants to the fund (p. 480).

2. The circuit court of appeals, despite petitioners' contention to the contrary, held that "Under the decisions of the Florida Supreme Court, which are binding on us, the drainage taxes remained a lien, but the tax liens of the State, having merged into its legal title, were no longer a lien or an encumbrance on the title of the United States." (R. 151–152.) The Murphy Act of 1937 provided for the vestiture in the State of title to all lands against which there remained outstanding tax certificates which were more than two years old (see Appendix, *infra*, pp. 13–14). In *Bice* v. *City of Haines*, 142 Fla. 371, 385, the Supreme Court of Florida held that the provision in Section 9 of the Murphy Act that "every right, title or interest of every nature or kind whatsoever of former owner of said property or anyone claiming by, through or under him, or anyone holding lien thereon shall cease, terminate and be

at an end" had reference only to private liens and, in that case, not to municipal tax liens. The Florida Supreme Court, in *Prince Hall Masonic Building Ass'n* v. *Jacksonville,* 149 Fla. 109, 122, held that under the Murphy Act, tax liens of the State merged into the fee simple title acquired by the State, and, finally, in the decision primarily relied on by the court below, *Carlile* v. *Melbourne-Tillman Drainage Dist.,* 143 Fla. 355, the Florida Supreme Court held that lands, title to which was acquired by the State under the Murphy Act, remain subject to liens for drainage district taxes. This decision in the *Carlile* case completely disposes of petitioners' contentions, for although the court in that case did not state whether the lien for drainage taxes there involved had been on a parity with or subordinate to the liens for state and county taxes before title vested in the State (*infra,* pp. 11–12), the court below was justified in deciding that it was unnecessary to give any consideration to the time when the liens for state and county taxes were asssessed or became delinquent since the state court, in the *Carlile* case, had pointed toward no such distinction. The decision in *Sugar Bowl Drainage District* v. *Miller,* 120 Fla. 436, decided five years before the *Carlile* case, did not concern the Murphy Act or the effect of any vesting of title in the State, but dealt with rights of private holders of tax certificates, and is therefore not apposite.

If there were any doubt as to the status of drainage liens which attached to lands on which there were state and county tax liens before the Act of 1927 (see Appendix, *infra*, p. 14) which granted "equal dignity" to drainage liens, we submit that, in the absence of further clarification by the Florida courts, this Court should not be called upon to substitute its judgment for that of the federal judges in the district and circuit embracing Florida. *MacGregor* v. *State Mutual Life Assurance Co.*, 315 U. S. 280.

3. Petitioners' final contention is that the liens of the Drainage District on lands not acquired by the State under the Murphy Act, except those based on maintenance taxes assessed after 1927 (see *supra*, p. 5), are subordinate to liens for state and county taxes. This contention can be readily disposed of by reference to the decision of the Florida Supreme Court in *Baldwin Drainage District* v. *Macclenny Turpentine Co.*, 18 S. (2d) 792. It was there held that where certificates for state taxes were acquired after the enactment of Chap. 12040, Laws of Florida, 1927, Sec. 1119 (see Appendix, *infra*, p. 14), providing that drainage taxes should "constitute a lien of equal dignity with the liens for State and County taxes * * *," the drainage taxes were of equal dignity with state and county taxes no matter when the former were assessed. See also *Ideal Farmers Drainage Dist.* v. *Certain Lands in Said*

District & Mountz, Fla. Sup. Ct., August 1, 1944 (a copy of the opinion in this case is lodged with the Clerk). In the present case, the state and county taxes on lands whose title did not vest in the State under the Murphy Act were all assessed after 1927 (R. 92, 105–111, 113), the effective date of the statute giving equal dignity to drainage tax liens.

CONCLUSION

The decision of the circuit court of appeals is correct and there is no conflict of decisions. The rulings of the circuit court of appeals and the district court on the questions of Florida law do not conflict in any way with the applicable local decisions. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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